



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 13, 2010

Ms. Neera Chatterjee
Office of General Counsel
The University of Texas System
201 West Seventh Street
Austin, Texas 78701-2902

OR2010-13859

Dear Ms. Chatterjee:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 393351(OGC 131181).

The University of Texas at El Paso (the "university") received a request for all police reports and files of sex offenses during a specified time period, the progress and disposition of cases resulting from those files, and Uniform Crime Report for three specified years.¹ You indicate you are releasing the requested Uniform Crime Reports. You also state that the university will redact fingerprints under section 552.101 in conjunction with 560.003 of the Government Code and Texas license plates and drivers' license numbers under section 552.130 of the Government Code pursuant to the previous determination issued on Open Records Decision No. 684 (2009).² You additionally state the university will redact social

¹You have provided documentation showing the university sought and received clarification from the requestor regarding her request for information. See Gov't Code § 552.222(b) (stating that if information requested is unclear to governmental body or if large amount of information has been requested, governmental body may ask requestor to clarify or narrow request, but may not inquire into purpose for which information will be used).

²This office recently issued Open Records Decision No. 684, a previous determination authorizing all governmental bodies to withhold ten categories of information, including a fingerprint under section 552.101 in conjunction with section 560.003 of the Government Code and Texas license plates and drivers' license numbers under section 552.130 of the Government Code, without the necessity of requesting an attorney general

security numbers from the submitted information under section 552.147 of the Government Code.³ You claim portions of the submitted information are not subject to the Act. You claim portions of the remaining information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the United States Department of Education Family Policy Compliance Office has informed this office that the Family Educational Rights and Privacy Act ("FERPA") does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act.⁴ Consequently, state and local educational authorities that receive a request for education records from a member of the public under the Act must not submit education records to this office in unredacted form, that is, in a form in which "personally identifiable information" is disclosed. *See* 34 C.F.R. § 99.3 (defining "personally identifiable information"). However, we note FERPA is not applicable to law enforcement records maintained by the university's police department (the "department") that were created by the department for a law enforcement purpose. *See* 20 U.S.C. § 1232g(a)(4)(B)(ii); 34 C.F.R. §§ 99.3, .8. You assert FERPA applies to portions of the submitted documents. Because our office is prohibited from reviewing these records to determine whether appropriate redactions under FERPA should be made, we will not address the applicability of FERPA to any of the submitted records. *See* 20 U.S.C. § 1232g(a)(1)(A). Such determinations under FERPA must be made by the educational authority in possession of the education records. However, we will consider your remaining arguments against disclosure of the submitted information.

Initially, we address your argument that the Internet Protocol ("IP") addresses in the submitted information do not constitute public information for purposes of the Act. In Open Records Decision No. 581 (1990), this office determined certain computer information that has no significance other than its use as a tool for the maintenance, manipulation, or protection of public property, such as source codes, documentation information, and other computer programming, is not the kind of information made public under section 552.021 of the Government Code. *See* ORD 581 at 6 (construing predecessor statute). Based on the reasoning in this decision and our review of the information at issue, we determine the submitted IP addresses do not constitute public information under section 552.002 of the

decision.

³Section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act. *See* Gov't Code § 552.147.

⁴A copy of this letter may be found on the Office of the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Government Code. Accordingly, this information is not subject to the Act and need not be released.

Next, we note the submitted information contains a search warrant and other documents, which we have marked, that have been filed with a court. Section 552.022(a)(17) of the Government Code provides for required public disclosure of "information that is also contained in a public court record," unless the information is expressly confidential under "other law." See Gov't Code § 552.022(a)(17). Although you seek to withhold the documents at issue under section 552.108 of the Government Code, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. See Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally), 177 at 3 (1977) (statutory predecessor to Gov't Code § 552.108 subject to waiver). As such, section 552.108 is not "other law" that make information expressly confidential for purposes of section 552.022(a)(17). Therefore, the university may not withhold the court-filed documents under section 552.108 of the Government Code. We also note that information that is otherwise confidential under common-law privacy may not be withheld if it is contained in a court-filed document. See *Star-Telegram v. Walker*, 834 S.W.2d 54 (Tex. 1992) (sexual assault victim's privacy right not violated by release of information in public court document). However, you seek to withhold some of the court-filed documents under section 552.101 of the Government Code which does constitute "other law" for purposes of section 552.022. Accordingly we will address your argument under this section for the court-filed documents at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 261.201 of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under [the Act] and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam Code § 261.201(a). Report 080110 was used or developed in an investigation of an alleged sexual assault of a child. See *id.* § 261.001(1)(E) (definition of child abuse includes

sexual assault under Penal Code section 22.011); *see also* Penal Code § 22.011(c)(1) (defining “child” for purposes of Penal Code sections 22.011 and 22.021 as a person younger than 17 years of age). We find report 080110 falls within the scope of section 261.201. As you do not indicate the university’s police department has adopted a rule governing the release of this type of information, we assume that no such regulation exists. We, therefore, conclude that report 080110 is confidential pursuant to section 261.201(a). *See* Open Records Decision No. 440 at 2 (construing predecessor statute). Accordingly, the university must withhold report 080110 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.⁵

Section 552.108 of the Government Code provides:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime[.]

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov’t Code § 552.108(a)(1), (b)(1). Section 552.108 protects certain specific types of law enforcement information. Section 552.108(a)(1) is applicable if release of the information would interfere with a particular criminal investigation or prosecution. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Section 552.108(b)(1) is applicable to internal records of a law enforcement agency, the release of which would interfere with law enforcement and crime prevention. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320, 327 (Tex. App.—Austin 2002, no pet.) (section 552.108(b)(1) protects information that if released would permit private citizens to anticipate weaknesses in police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate state laws). A governmental body that raises section 552.108 must reasonably

⁵As our ruling is dispositive, we need not address your remaining arguments for this information.

explain how and why this exception is applicable to the information at issue. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You explain the remaining information at issue is maintained by the department. You state the department is a law enforcement agency established pursuant to section 51.203 of the Education Code. You assert, and provide a letter from the chief of the department confirming, the information pertaining to report number 070428 relates to a pending criminal investigation. Based on this representation, and our review of the information at issue, we conclude that the release of the information pertaining to report number 070428 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e.*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, we agree that section 552.108(a)(1) of the Government Code is applicable to report number 070428.

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. *See* Gov't Code § 552.301(e)(1)(A); *see Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state the information related to report numbers 070055 and 060224 pertains to cases that did not result in convictions or deferred adjudications. Additionally, you indicate report number 070815 relates to a criminal investigation where the suspect was charged with two separate offenses. You state one of the offenses resulted in deferred adjudication, but the other offense concluded in a result other than a conviction or deferred adjudication. Upon review, we find the information relating to both offenses in report number 070815 is so intertwined that the investigation cannot be segregated. Therefore, we agree section 552.108(a)(2) is applicable to report numbers 070055, 070815, and 060224.

We note, however, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code. § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. *See* 531 S.W.2d at 186-88; Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). We note that basic information includes, among other items, an identification and description of the complainant and a detailed description of the offense, but does not include victim identifying information unless the victim is also the complainant. *See id.* at 3-4. We note the portions of the information you have marked in green as basic information do not include the identity of the complainant or a sufficiently detailed description of the offense in certain instances. Therefore, with the exception of basic information, the university may withhold report number 070428 pursuant to

section 552.108(a)(1) of the Government Code and report numbers 070055, 070815, and 060224 pursuant to section 552.108(a)(2) of the Government Code.⁶

Section 552.101 also encompasses common-law privacy and constitutional privacy. Common-law privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). Common-law privacy protects the types of information considered intimate or embarrassing by the Texas Supreme Court in *Industrial Foundation*, including information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. *See Indus. Found.*, 540 S.W.2d at 683. In Open Records Decision No. 393 (1983), this office concluded information that either identifies or tends to identify a victim of sexual assault or other sex-related offense must be withheld under common-law privacy. Open Records Decision Nos. 393 at 2, 339 (1982); *see also Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied) (identity of witnesses to and victims of sexual harassment was highly intimate or embarrassing information and public did not have a legitimate interest in such information). Upon review, we find some of the basic information in report numbers 070428, 070055, 070815, and 060224 is highly intimate or embarrassing and not of legitimate public interest. Therefore, the university must withhold the information we have marked in these reports under section 552.101 in conjunction with common-law privacy. However, we find that none of the remaining basic information in is highly intimate or embarrassing and not of legitimate public interest. Accordingly, none of the remaining basic information in the reports at issue may be withheld under section 552.101 in conjunction with common-law privacy.

Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 at 4 (1987). The first type protects an individual's autonomy within "zones of privacy," which include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. *Id.* The second type of constitutional privacy requires a balancing between the individual's privacy interests and the public's need to know information of public concern. *Id.* The scope of information protected is narrower than under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)). In this instance, we find the university has failed to demonstrate any of the remaining information constitutes the most intimate aspects of human affairs. Accordingly, none of the remaining information may be withheld under section 552.101 of the Government Code in conjunction with constitutional privacy.

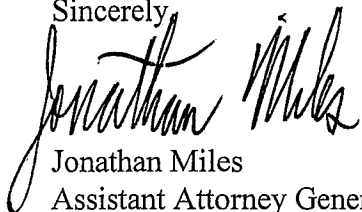
⁶As our ruling is dispositive of this informatoin, we need not address your remaining arguments against its disclosure.

In summary, the submitted IP addresses do not constitute public information under section 552.002 of the Government Code and thus the university is not required to release this information. The university must withhold the information related to report 080110 in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code. With the exception of basic information, the university may withhold report number 070428 pursuant to section 552.108(a)(1) of the Government Code and report numbers 070055, 070815, and 060224 pursuant to section 552.108(a)(2) of the Government Code. In releasing basic information, the university must withhold the information we have marked under section 552.101 in conjunction with common-law privacy. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jonathan Miles
Assistant Attorney General
Open Records Division

JM/eeg

Ref: ID# 393351

Enc. Submitted documents

c: Requestor
(w/o enclosures)